

**House File 2178 - Introduced**

HOUSE FILE 2178

BY WATTS, HAGENOW, KAUFMANN,  
and PEARSON

**A BILL FOR**

1 An Act relating to special assessments imposed by cities and  
2 counties and including applicability provisions.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 331.488, subsection 3, Code 2011, is  
2 amended to read as follows:

3 3. The method of specially assessing and determining  
4 benefits and determining individual benefits, district  
5 benefits, and community benefits.

6 Sec. 2. Section 384.37, subsection 4, Code 2011, is amended  
7 to read as follows:

8 4. "*District*" means the lots or parts of lots within  
9 boundaries of a geographic area established by the council for  
10 the purpose of the assessment of all or part of the cost of  
11 a public improvement that is intended in whole or in part to  
12 provide an individual benefit to such lots or parts of lots.

13 Sec. 3. Section 384.37, Code 2011, is amended by adding the  
14 following new subsections:

15 NEW SUBSECTION. 2A. "*Community benefit*" means that portion  
16 of the total benefit derived from a public improvement designed  
17 to be used by or serve the general public and community that  
18 is in excess of the district benefit, if any, including but  
19 not limited to those public improvements or parts of a public  
20 improvement specified in section 384.61, subsection 4.

21 NEW SUBSECTION. 4A. "*District benefit*" means the sum of all  
22 individual benefits conferred upon lots within the district.

23 NEW SUBSECTION. 8A. "*Individual benefit*" means that  
24 amount of the total benefit of a public improvement that is  
25 proportionate to the lot's use of the public improvement or  
26 the amount of a benefit conferred upon the individual lot by a  
27 public improvement that is intended to benefit, serve, or be  
28 used only by the lot, including but not limited to those items  
29 specified in section 384.61, subsection 3.

30 Sec. 4. Section 384.37, subsection 25, Code 2011, is amended  
31 to read as follows:

32 25. "*Street improvement*" means the construction or repair of  
33 a street by grading, paving, curbing, guttering, and surfacing  
34 with oil, oil and gravel, or chloride, ~~and~~ street lighting  
35 fixtures, connections and facilities, storm water management

1 intakes, sewers, and facilities, and traffic-control devices,  
2 fixtures, connections, and facilities.

3 Sec. 5. Section 384.38, subsections 1 and 2, Code 2011, are  
4 amended to read as follows:

5 1. A city may, subject to the limitations of this division,  
6 assess to private property within the city the cost of  
7 construction and repair of public improvements within the  
8 city, and main sewers, sewage pumping stations, disposal and  
9 treatment plants, waterworks, water mains, extensions, and  
10 drainage conduits extending outside the city.

11 2. Upon petition as provided in section 384.41, subsection  
12 1, a city may assess to private property affected by public  
13 improvements within three miles of the city's boundaries the  
14 cost of construction and repair of public improvements within  
15 that area. The right-of-way of a railway company shall not  
16 be assessed unless the company joins as a petitioner for said  
17 improvements. In the petition the property owners shall waive  
18 the limitation provided in section 384.62 that an assessment  
19 shall not exceed twenty-five percent of the value of the lot.  
20 The petition shall contain a statement that the owners agree  
21 to pay the city an amount equal to five percent of the cost of  
22 the improvements, to cover administrative expenses incurred  
23 by the city. This amount may be added to the cost of the  
24 improvements. Before the council may adopt the ordinance under  
25 section 384.42, subsection 1A, the resolution of necessity, the  
26 preliminary resolution, preliminary plans and specifications,  
27 plat, schedule, and estimate of cost must be submitted to, and  
28 receive written approval from, the board of supervisors of  
29 any county which contains part of the property, and the city  
30 development board established in section 368.9.

31 Sec. 6. Section 384.41, subsection 1, Code 2011, is amended  
32 to read as follows:

33 1. Property owners may initiate a plan for a public  
34 improvement to be paid for in whole or in part by special  
35 assessments, by written contract to be approved by the city and

1 signed by all of the owners of record of all property affected  
2 by the proposed assessment. If all owners of record of all  
3 the property to be affected by the public improvement petition  
4 the council, said owners may, in their petition, waive notice  
5 to property owners by publication and mailing, as provided  
6 in section 384.50, and the council may proceed to adopt the  
7 ordinance under section 384.42, subsection 1A, a preliminary  
8 resolution, a plat, schedule and estimate, and resolution  
9 of necessity, and order preparation of detailed plans and  
10 specifications. Special assessments initiated without notice  
11 under this section are liens upon the property to be affected  
12 by the assessment, to the same extent as provided in section  
13 384.65, subsection 5, except that they shall be subordinate  
14 to any perfected lien unless the holder of such perfected  
15 lien consents in writing to the initiation of the public  
16 improvement.

17 Sec. 7. Section 384.42, Code 2011, is amended by adding the  
18 following new subsection:

19 NEW SUBSECTION. 1A. Prior to the adoption of a preliminary  
20 resolution under subsection 2, adopt an ordinance after  
21 forty-five days' notice and twenty days' notice, each published  
22 in accordance with section 362.3, and a public hearing,  
23 setting forth the method to be used in determining the amount  
24 of individual benefit, district benefit, and community  
25 benefit projected to result from the public improvement and  
26 a description of the manner in which the cost of the public  
27 improvement will be allocated to each category of benefit.

28 Sec. 8. Section 384.42, subsections 2 and 3, Code 2011, are  
29 amended to read as follows:

30 2. Adopt a preliminary resolution by the vote of a majority  
31 of all the members of the council, after thirty days' notice of  
32 the preliminary resolution published in accordance with section  
33 362.3. The preliminary resolution shall contain the following:

34 a. A description of the types or alternate types of  
35 improvement proposed.

1     *b.* The beginning and terminal points or general location of  
2 the proposed improvement.

3     *c.* An order to the engineer to prepare preliminary plans and  
4 specifications, estimated total cost of the work, and a plat  
5 and schedule, and to file them with the clerk.

6     *d.* A general description of the property or a designation  
7 of the lots which the council believes will be ~~specialy~~  
8 individually benefited by the improvement.

9     *e.* A detailed description of the method used for determining  
10 benefits as adopted by ordinance under subsection 1A, an  
11 estimate of the amount of individual benefit, district benefit,  
12 and community benefit that will be conferred as a result of the  
13 public improvement, and a statement of the proportion of the  
14 total cost of the public improvement that the council proposes  
15 to assess against all property within the proposed district.

16     3. The preliminary resolution may also contain ~~the~~  
17 ~~following:~~

18     ~~*a.* A statement of the proportion of the total cost which~~  
19 ~~the council proposes to assess against specially benefited~~  
20 ~~property.~~

21     ~~*b.* A a short and convenient designation for the public~~  
22 ~~improvement by which it may be referred to in all subsequent~~  
23 ~~proceedings.~~

24     Sec. 9. Section 384.44, Code 2011, is amended to read as  
25 follows:

26     **384.44 Estimated cost.**

27     The estimated total cost of any public improvement  
28 constructed under this part must include all of the items  
29 of cost listed in section 384.37, subsection 26, which the  
30 council proposes to include as a part of the cost of the public  
31 improvement, and may include an item to be known as the default  
32 fund amounting to not more than ten percent of the portion of  
33 the total cost of the improvement which the council proposes to  
34 assess against ~~specialy~~ individually benefited property.

35     Sec. 10. Section 384.47, subsections 3 through 5, Code 2011,

1 are amended to read as follows:

2 3. The total amount proposed to be assessed to each  
3 lot according to the method described in the preliminary  
4 resolution, including the assessment for the default fund, if  
5 any.

6 4. The proportion of the estimated total cost of the public  
7 improvement which is allocated to each lot as an individual  
8 benefit.

9 5. The amount of deficiency, if any, between the amount  
10 proposed to be assessed and the proportion of the estimated  
11 total cost of the public improvement allocated to each lot  
12 as an individual benefit. The amount of deficiency shall be  
13 shown as a conditional deficiency assessment as authorized by  
14 sections 384.60, 384.62 and 384.63.

15 Sec. 11. Section 384.51, unnumbered paragraph 2, Code 2011,  
16 is amended to read as follows:

17 An amendment which extends the boundaries of a district,  
18 increases the amount to be assessed against a lot, or adds  
19 additional public improvements, is not effective until an  
20 amended ordinance, plat, schedule, and estimate have been  
21 prepared and adopted, a notice published and mailed to all  
22 affected property owners, and hearing held in the same manner  
23 as the original proceedings, or until all affected property  
24 owners agree in writing to the change. The adoption of a  
25 resolution of necessity is a legislative determination that the  
26 improvement is expedient and proper and that property assessed  
27 will be ~~specially~~ individually benefited by the improvement and  
28 this determination of the council is conclusive. Ownership of  
29 property to be assessed by an improvement does not, except for  
30 fraud or bad faith, disqualify a council member from voting on  
31 any measure.

32 Sec. 12. Section 384.54, subsection 15, Code 2011, is  
33 amended to read as follows:

34 15. ~~a. The cost of all court proceedings are a legitimate~~  
35 ~~item of expense in connection with a public improvement,~~

1 ~~and may be included within the final assessment against any~~  
2 ~~property specially benefited in the assessment district.~~

3 ~~b.~~ Whenever on a hearing by the court, the amount of any  
4 assessment is reduced or canceled so that there is a deficiency  
5 in the total amount remaining assessed in the proceeding, the  
6 court may assess the deficiency to the city or distribute the  
7 deficiency upon the other property abutting upon or adjacent to  
8 the improvement or in the district assessed, in a manner the  
9 court finds to be just and equitable, not exceeding, however,  
10 the amount the property would be ~~specially~~ individually  
11 benefited by the improvement, and not exceeding twenty-five  
12 percent of the value of the lot as shown by the plat and  
13 schedule of assessments or as reduced by the court.

14 Sec. 13. Section 384.61, Code 2011, is amended to read as  
15 follows:

16 **384.61 Assessment of benefits.**

17 1. The total cost of a public improvement, except for  
18 paving that portion of a street lying between railroad  
19 tracks and one foot outside of the tracks, or which is to  
20 be otherwise paid, ~~must~~ may be assessed against all lots  
21 within the assessment district in accordance with the ~~special~~  
22 individual benefits conferred upon the property, and not in  
23 excess of such benefits. That portion of the total cost of  
24 a public improvement that is not assessed to individual lots  
25 in the district as the result of individual benefits shall be  
26 attributable to the community benefit and shall be paid by the  
27 city.

28 2. A property owner may divide property that is subject to  
29 a special assessment into two or more lots for the purpose of  
30 separating improved portions of the land from those portions  
31 of the land which are unimproved or used for agricultural  
32 purposes. If an owner of property subject to special  
33 assessment divides the property into two or more lots, and if  
34 the plan of division is approved by the council, the owner  
35 may discharge the lien upon any of the lots by payment of the

1 amount unpaid, calculated as determined by the council.

2 3. All of the following public improvements are presumed to  
3 confer an individual benefit on a lot within a district:

4 a. A public improvement that benefits, serves, or that  
5 is intended for use by only one lot, unless such public  
6 improvement is replacing an existing public improvement of  
7 acceptable or working quality and is required as a result of  
8 work on or repair of another public improvement that does not  
9 benefit, serve, or that is not intended for use by only that  
10 lot.

11 b. A sidewalk upon a lot that is single-family residential  
12 property located along the frontage of the lot not to exceed  
13 four feet in width at a standard thickness.

14 c. A sidewalk on a lot that is commercial property or  
15 multifamily residential property located along the street  
16 frontage of the lot not to exceed six feet in width at a  
17 standard thickness.

18 d. Underground gas, water, heating, sanitary sewer, storm  
19 sewer, and electrical connections and accessories located in a  
20 public street right-of-way and that serve only the lot.

21 4. All of the following public improvements are presumed to  
22 confer a community benefit:

23 a. A public improvement or part of a public improvement  
24 that is intended for use by or intended to serve lots outside  
25 the district.

26 b. A sidewalk or recreational trail, or part thereof, that  
27 is part of a community-wide public recreational trail system.

28 c. The portion of a sidewalk that exceeds the portion of the  
29 sidewalk presumed to be an individual benefit under subsection  
30 3, paragraph "b" or "c".

31 d. Notwithstanding any provision of this division to the  
32 contrary, the planning, legal, administrative, and inspection  
33 costs, including city employee salary costs, associated with  
34 a public improvement that is paid for in part by special  
35 assessments.

1     5. a. Notwithstanding any other provision in this  
2 division to the contrary, each city undertaking the repair  
3 or construction of a public improvement that includes a  
4 street improvement paid for in whole or in part by a special  
5 assessment shall, prior to the preparation of the schedule  
6 under section 384.47, complete a vehicle traffic analysis and  
7 forecast for the location of the proposed street improvement  
8 that includes but is not limited to a determination of the  
9 current amount of vehicle traffic generated by each lot within  
10 the proposed district, a determination of the current amount of  
11 vehicle traffic generated by sources other than the lots within  
12 the district, and a determination of the amount of vehicle  
13 traffic forecasted to be generated from each such source  
14 in the future based on the type of street being analyzed,  
15 completion of the public improvement, full development of the  
16 district, and future planned land use within the district.  
17 In conjunction with actual vehicle traffic data available to  
18 the city, the vehicle traffic analysis and forecast shall be  
19 completed using the most current trip generation data from the  
20 institute of transportation engineers for planned land uses.

21     b. The individual benefit accruing to each lot within the  
22 district as the result of the street improvement shall not  
23 exceed the percentage of the total benefit from the street  
24 improvement that is proportionate to the lot's forecasted  
25 amount of traffic generated as it bears to the total forecasted  
26 amount of vehicle traffic.

27     Sec. 14. Section 384.63, subsection 2, Code 2011, is amended  
28 to read as follows:

29     2. The council shall, by resolution, provide that the  
30 deficiencies for the lots specially individually benefited by a  
31 public improvement shall be certified to the county treasurer,  
32 who shall record them in the county system as "special  
33 assessment deficiencies", and to the appropriate city official  
34 charged with the responsibility of issuing building permits,  
35 who shall notify the council when a private improvement is

1 subsequently constructed on any lot subject to a deficiency.  
2 Certification to the county treasurer shall include a legal  
3 description of each lot. The period of amortization for a  
4 public improvement for which there are deficiencies shall  
5 commence with the adoption of the resolution of necessity  
6 and extend for the same period for which installments of  
7 assessments for the project are made payable. Deficiencies may  
8 be assessed only during the period of amortization, which shall  
9 also be certified to the county treasurer and the city official  
10 charged with the responsibility of issuing building permits.  
11 Certification to the county treasurer shall include a legal  
12 description of each lot.

13 Sec. 15. APPLICABILITY. This Act applies to public  
14 improvements undertaken on or after July 1, 2012.

15 EXPLANATION

16 This bill relates to special assessments imposed by cities  
17 and counties on private property for the cost of a public  
18 improvement.

19 The bill establishes definitions of "community benefit",  
20 "district benefit", and "individual benefit" under Code chapter  
21 384, division IV. The bill also adds storm water management  
22 intakes, sewers, and facilities and traffic-control devices,  
23 fixtures, connections, and facilities to the definition of  
24 "street improvement" under Code section 384.37.

25 The bill amends the definition of "district" in Code section  
26 384.37 to mean the lots or parts of lots within boundaries of  
27 a geographic area established by the council for the purpose  
28 of the assessment of all or part of the cost of a public  
29 improvement that is intended in whole or in part to provide an  
30 individual benefit to such lots or parts of lots.

31 The bill requires that prior to the adoption of a preliminary  
32 resolution related to a public improvement, a city must  
33 adopt an ordinance, after specified notices and a hearing,  
34 setting forth the method to be used in determining the amount  
35 of individual benefit, district benefit, and community

1 benefit projected to result from the public improvement and  
2 a description of the manner in which the cost of the public  
3 improvement will be allocated to each category of benefit.

4 The bill requires that 30 days' notice of a resolution  
5 be published prior to adoption of the preliminary resolution  
6 related to a public improvement. The bill requires the  
7 preliminary resolution to contain a detailed description of  
8 the method used for determining benefits as previously adopted  
9 by ordinance, an estimate of the amount of individual benefit,  
10 district benefit, and community benefit that will be conferred  
11 as a result of the public improvement, and a statement of the  
12 proportion of the total cost of the public improvement which  
13 the council proposes to assess against property within the  
14 proposed special assessment district.

15 The bill specifies that the total cost of a public  
16 improvement, except for certain paving near railroad tracks  
17 or improvements to be otherwise paid, may be assessed against  
18 all lots within the assessment district in accordance with the  
19 individual benefits conferred upon the property, and not in  
20 excess of such benefits. The bill provides that the portion  
21 of the total cost of a public improvement that is not assessed  
22 to individual lots as the result of individual benefits is  
23 attributable to the community benefit and shall be paid by the  
24 city.

25 The bill strikes the provision of Code section 384.54 that  
26 designated the cost of all court proceedings to be a legitimate  
27 item of expense in connection with a public improvement and  
28 allowed such costs to be included within the final assessment  
29 against any property specially benefited in the assessment  
30 district.

31 The bill allows a property owner to divide property that  
32 is subject to a special assessment into two or more lots for  
33 the purpose of separating improved portions of the land from  
34 those portions of the land which are unimproved or used for  
35 agricultural purposes.

1 The bill designates certain public improvements that are  
2 presumed to confer an individual benefit and designates certain  
3 public improvements that are presumed to confer a community  
4 benefit. Under the bill, the planning, legal, administrative,  
5 and inspection costs, including city employee salary costs,  
6 associated with a public improvement that is paid for in part  
7 by special assessments may not be assessed to individual lots  
8 within a district and shall instead be paid by the city as a  
9 community benefit.

10 The bill requires each city undertaking the repair or  
11 construction of a public improvement that includes a street  
12 improvement, as defined in the bill, paid for in whole or in  
13 part by a special assessment to complete a vehicle traffic  
14 analysis and forecast for the location of the proposed  
15 street improvement that includes but is not limited to a  
16 determination of the current amount of vehicle traffic  
17 generated by each lot within the proposed special assessment  
18 district, a determination of the current amount of vehicle  
19 traffic generated by sources other than the lots within the  
20 district, and a determination of the amount of vehicle traffic  
21 forecasted to be generated from each such source in the future  
22 based on the type of street being analyzed, completion of the  
23 public improvement, full development of the district, and  
24 future planned land use within the district. In conjunction  
25 with actual vehicle traffic data available to the city, the  
26 vehicle traffic analysis and forecast must be completed using  
27 the most current trip generation data from the institute of  
28 transportation engineers for planned land uses. The bill  
29 specifies that the individual benefit accruing to each lot  
30 within the district as the result of the street improvement  
31 shall not exceed the percentage of the total benefit from  
32 the street improvement that is proportionate to the lot's  
33 forecasted amount of traffic generated as it bears to the total  
34 forecasted amount of vehicle traffic.

35 By operation of law, the bill modifies similar provisions

1 relating to the authority of a county to assess to property the  
2 costs of a public improvement under Code chapter 331 and the  
3 authority of a sanitary district under Code chapter 358.  
4 This Act applies to public improvements undertaken on or  
5 after July 1, 2012.